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November 30, 2010

Mr. Jeff Derouen
Executive Director
PUBLIC SERVICE COMMISSION
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED
DEC 03 2010
PUBLIC SERVICE
COMMISSION

Re: PSC Case Nos. 2010-00203

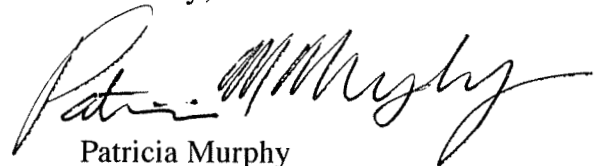
Dear Mr. Derouen:

I enclose the following documents for filing on behalf of the Midwest Independent System Operator, Inc., in the above-referenced proceeding:

- Original and ten copies of the Response of the Midwest Independent System Operator, Inc. to Duke Energy Kentucky, Inc.'s Memorandum Contra and Motion to Strike;
- One copy of the Response (for file-stamp); and
- A self-addressed stamped envelope (for file-stamp copy).

Please let me know if you have any questions.

Sincerely,



Patricia Murphy
Administrator

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

Duke Energy Kentucky, Inc.'s Application for Approval to Transfer Functional Control of Certain Transmission Assets from the Midwest Independent Transmission System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment

FEB 03 2010

PUBLIC SERVICE
COMMISSION

Case No. 2010-00203

**Response of the Midwest Independent Transmission System Operator, Inc.,
to Duke Energy Kentucky, Inc.'s Memorandum Contra and Motion to Strike**

The Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") hereby responds to Duke Energy Kentucky, Inc. ("DEK")'s Memorandum Contra of Midwest Independent Transmission System's [sic] Motion for Extension of Time to File its Post-Hearing Brief and Motion to Strike ("Memorandum Contra").

I. Response to DEK's Opposition to Extension

1. At the hearing held on November 3, 2010, counsel for the Midwest ISO requested three weeks to file a post-hearing brief, or at least until Monday, November 22, 2010. (11/3/10 Video Transcript ("VT") 18:27-:28).

2. As an accommodation to the request of DEK for a ruling on its application in this case by mid-December, the Commission ordered the parties to submit post-hearing briefs by November 19, 2010.

3. The Midwest ISO received a copy of DEK's post-hearing data responses on November 11, 2010.

4. The Midwest ISO did not "[s]imply ignor[e]" the filing deadline as DEK contends in its Memorandum Contra; counsel for the Midwest ISO worked diligently to provide the

Commission with a thoroughly sourced¹ argument regarding the transfer as proposed by DEK, as well as viable alternatives to the transfer as proposed.

5. In the late afternoon, it became clear that the Midwest ISO would be unable to make the requisite copies of the brief and deliver them to the Commission by 5 p.m. on November 19, 2010, without omitting (or leaving un-proofread) a not insignificant number of citations to the record. The option of submitting a copy by fax was also not available because the brief (and accompanying filings)² exceeded the 20-page limit. Counsel for the Midwest ISO therefore called Commission staff attorney, Richard Raff, and apprised him of the situation. Counsel for the Midwest ISO informed Mr. Raff that the Midwest ISO would file the brief along with a written motion for extension after-hours on the due date, and would circulate a copy of the brief by email to counsel of record on the same day³.

6. Commission regulations require an application for an extension of time to file a brief to “be made to the commission in writing;” the regulations do not require the application to be filed before the deadline that the applicant seeks to extend, as DEK implies. (*See* KAR 5:001 Section 4(11)).

7. The Midwest ISO hand-delivered its post-hearing brief along with its written motion for extension to the Commission for filing after hours on November 19, 2010, the due date. (*See* Post-Hearing Brief of the Midwest ISO, at p. 31 (Certificate of Service)).

8. The undersigned attests that counsel for the Midwest ISO did not review the other parties’ post-hearing briefs before filing, serving, and emailing the Midwest ISO’s brief.

¹ As filed, the Midwest ISO’s Post-Hearing Brief contains 125 footnotes, and there are additional citations to the Record in the body of the Brief.

² The Midwest ISO also delivered at the same time a confidential supplement to its post-hearing brief, with a petition for the Commission to accord the supplement confidential treatment.

³ An e-mail was sent out to counsel of record on November 19, 2010 at 7:49 pm with a copy of the filings attached.

9. The Commission’s consideration of the arguments presented by the Midwest ISO in its post-hearing brief will in no way prejudice any of the other parties, and may assist the Commission in its resolution of the many complicated legal and factual issues presented by DEK’s application.

10. The Midwest ISO submits that the Commission’s consideration of DEK’s Memorandum Contra is more likely to delay a decision on DEK’s application than the Midwest ISO’s after-hours filing of its brief on the due date.

II. Response to DEK’s Motion to Strike

11. DEK alternatively asks that “the new and unsupported arguments that Midwest ISO is attempting to introduce should be excluded from the record.” (Memorandum Contra, at 6). The Midwest ISO notes that there are no such “new and unsupported arguments” in its Post-Hearing Brief and, therefore, there is nothing to be excluded. Furthermore, because the Commission is fully able to discern and assess the factual and legal bases for any arguments presented or the positions taken in the Midwest ISO’s Brief,⁴ the appropriate procedure is for the Commission to give no weight to unfounded positions rather than to “exclude” unspecified portions of the Brief.

12. If DEK were truly interested in having portions of the Midwest ISO's brief stricken – as opposed to what appears to be an attempt to respond to arguments presented by the Midwest ISO and to supplement its own brief with additional arguments and citations to the record – then presumably DEK would have more specifically identified those portions for the Commission. Because DEK presents, through this additional filing, substantive arguments and

⁴ See also 807 KAR 5:001, §4(3) (The Commission “may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.”).

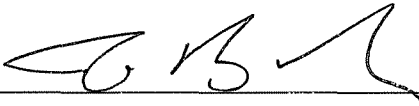
citations to the Record on issues left out of its post-hearing brief (or on which DEK now may consider that something more should be filed), the motion to strike is actually a late-filed addition to that post-hearing brief or an attempt to file a response brief. Rather than further complicating matters and possibly delaying the proceedings by moving to strike, or for leave to reply to, substantive arguments DEK inappropriately makes in its Contra Memorandum, the Midwest ISO will leave it to this able Commission to discern what arguments and evidence it should consider, and to rule accordingly.

WHEREFORE, the Midwest ISO respectfully requests that the Commission (1) grant its motion for a brief extension, (2) deny DEK's motion to strike, and (3) grant all other relief appropriate and necessary in response to DEK's motion to strike.

Respectfully submitted,

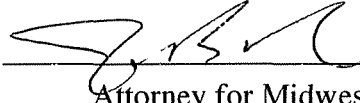
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By: 
COUNSEL FOR MIDWEST INDEPENDENT
TRANSMISSION SYSTEM OPERATOR, INC.

CERTIFICATE of FILING and SERVICE

I hereby certify that on this the 30th day of November, 2010, the original and 10 copies of the foregoing were mailed, via U.S. Mail, first-class, postage prepaid, to the Commission for filing, a courtesy copy was emailed to counsel, and a copy was served, via U.S. Mail, first-class, postage prepaid, on each person at the address shown on the attached Service List.

A handwritten signature in black ink, appearing to be 'J. A. C.', written over a horizontal line.

Attorney for Midwest Independent
Transmission System Operator, Inc.

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Ky. PSC Case No. 2010-00203

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